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To Promote the Efficient Administration of Justice

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Whoever brings a fruitful idea to any branch of knowledge rends the veil that seems to sever one portion from another; his name is written in the Book among the builders of the Temple.

—*Sir Frederick Pollack.*

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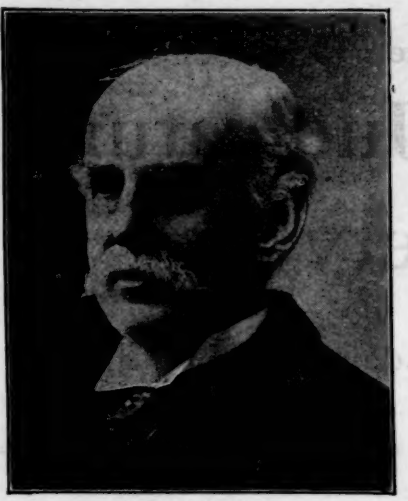

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LIST OF PUBLICATIONS

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Bulletin IV-A—Second draft of so much of the Metropolitan Court Act as relates to the Selection and Retirement of Judges. This applies in large part to courts outside of large cities. Pp. 127.

Bulletin IV-B—Second draft of Metropolitan Court Act. Court organization for large cities. Pp. 94.

Bulletin VI—Organization of Courts, by Roscoe Pound; Methods of Selecting and Retiring Judges, by Albert M. Kales; Local Courts of Limited Jurisdiction (for rural counties), by Herbert Harley. Pp. 68.

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Editorial

The article in this number on the English Judicature Acts is ideally concise and informative. There are no references more frequent in articles dealing with court organization and procedure than those to the acts which unified the English trial and appellate courts, but, owing to the comparative inaccessibility of this legislation to American lawyers, there are few great landmarks in the history of these subjects which are less understood. The second article, being a report on English court organization and procedure, by a committee of the Board of Circuit Judges of the State of Wisconsin, illustrates the value of English precedent even in a state which has long possessed code procedure. The report is not final, but it is so suggestive that we consider it deserves publication at this time. We shall hope later to publish the final result of the committee's studies and recommendations.

Is it true that courts will always necessarily be as unpopular as they have been in our day and our country? The assertion is often heard that no matter what may be done to improve judicial administration there will always be general criticism of the courts; that it is inherent and unescapable. We think that this is only in slight measure true. The courts have been criticized more pointedly in the last two or three decades than ever before. It is undeniable that this barrage of criticism has been concurrent with a period of lowered efficiency as well as a period of intensified skepticism.

There are reasons for thinking that the situation is not beyond remedy. Of course there will always be individuals who will have occasion to smart under verdicts and judgments. The court is called upon to take from individuals their liberties and their fortunes. But when done under laws which merit general approval every such judgment serves equally to fortify the courts in the minds of those who see in them the bulwarks against lawlessness and greed and cunning.

Thoughtless and unfair criticism of courts is even today very rare. Of intelligent and well founded criticism there is abundance. More and more it is seen that the defects of the institution are not inherent, but that, on the contrary, they spring from inability of the courts to adjust their methods to new conditions. Much of our court organization is that of our grandfathers. Wherever modern life has most altered modes of living and transacting business, and wherever the need for the businesslike development of judicial administration has been most effectually blocked by unyielding constitutions, there criticism is most emphatic as well as most justified.

Americans are restless and avid for perfection, but they are no more unfair in their estimates than other peoples. In certain jurisdictions where the courts have been able to keep abreast of the modern demands for promptness and economy, where they have shown an understanding of civic ideals, they are respected quite as much as are the courts of certain other countries where appreciation is more conspicuous than criticism. When one considers the shortcomings of judicial administration in some of our worst spots it is really a matter of wonder that distrust has not been more emphatic.

That there is occasionally undeserved criticism may be set down largely to the fact that our courts keep no books. When unjustly accused they cannot open the ledger and reveal the facts. And this accounts likewise for the fact that

innumerable efforts to improve the situation have been false. One of the first reforms that the courts need to make in their own behalf is to record and publish complete administrative statistics. Until they do this they do not themselves know what they are doing, and much less whether they are doing it well or ill.

There is every reason why the ordinary facts of judicial administration should be recorded. A large sector of government is kept blindfolded in the absence of these data. Bogus reforms are spawned on false assumptions of fact. The courts themselves, when wrongly attacked, cannot make a sufficient defense.

Courts which possess efficiency organization, including as it must the keeping of records, are able not only to refute unfair attacks, but are able also to prove their success and to win popular approval. Our people like to boast even more than they like to muckrake. They are just as fond of bragging about their courts and their judges when convinced that they are superior as of any other part of their common heritage.

As long as courts refuse to furnish the facts they must expect to suffer the consequences of obscurantism, or worse. A willful refusal to meet this need makes them merit condemnation, because the refusal must be based upon unwillingness to set a standard and endeavor to live up to that standard.

The Nebraska State Bar Association refused to approve the proposed bill for organizing all the lawyers of the state. The secretary reports that the objections appeared to be to the draft as submitted rather than to the principle involved. The idea of self-government and responsibility for the bar is one which strikes lawyers at first as entirely original and in consequence it encounters all the objections which new ideas must meet. In nearly every instance the first reaction is hostile. The validity and inherent force of this particular idea is evidenced, however, by the almost universal acceptance of it after a brief period of consideration. There must be time for incubation. It is hopeless to expect favorable action by a legislature until the better element of the bar is converted, though the introduction of a bill will prove highly educative. The Nebraska Association authorized the appointment of a new committee on the subject.

The need for specialization in courts is well illustrated by the success of automobile or traffic courts in a number of cities. Wherever one judge is detailed for this class of causes, system, consistency and standardization immediately result. That one judge becomes in a large measure responsible for public safety on the streets. The absurdity of various penalties for identical offenses disappears. Offenders are treated alike. The one judge so singled out is less easily influenced to favor individual offenders than is the case when there are several judges participating in these cases.

The same benefits flow from specialization in other branches of judicial administration, including private law. Within reasonable limits a judge's efficiency depends upon concentration upon a relatively narrow field. The development of the specialist judge in turn calls for overhead organization or hopeless confusion will result. In courts where there is effective organization it is an easy matter to cope with special administrative difficulties by segregating causes of a like nature and assigning to them a judge specially fitted to deal with them.

The English Judicature Acts

Description of Statutes Under Which Unification of Numerous Courts Was Effected—From an Address to the Illinois State Bar Association by Albert M. Kales, Esq.

[Note—The notes a to j will be found at the end of this article. They were written by Mr. Reginald Primrose, Inner Temple, Barrister at Law. The author acknowledges with thanks the critical assistance of Mr. Primrose and also of Mr. Ernest E. Wild, K. C.]

The first English Judicature Act was passed in 1873.[1] This was amended in important particulars and supplemented by the Act of 1875.[2] Since then there has been amendatory and supplementary legislation dealing only, however, with particular details. The first two acts together are spoken of as the Judicature Acts.

These acts are comparatively brief. That of 1873 has 100 sections. By the Act of 1875 about 21 of these sections were eliminated and replaced with amended sections and about 10 new sections were added. A considerable number of subjects dealt with by both acts were required by reason of the fact that in a system of great age and many traditions matters which seem to us of minor importance so far as the principal objects of the acts were concerned had to be adjusted. Precedence of judges, the saving of places and emoluments in which various persons had a vested interest and the provisions for fees and courts with a local customary jurisdiction all had to be dealt with. I have estimated that the essential features of the Judicature Acts, if transferred to a fresh American jurisdiction, would require not to exceed 40 sections and probably not more than 30.

The following are the notable features of the Judicature Acts and those from which we in this country may learn most:

First: The elimination of all jurisdictional lines between courts by the merging of the whole judicial power in one court and the abolition of the distinction between law and equity as a jurisdictional matter;

Second: At the same time retaining specialization by the judges in different classes of judicial work by separating the court into divisions, each handling different sorts of causes, and while permitting judges to sit in any division, keeping each judge at work regularly in a particular division.

Third: The application of the principle of placing in an administrative head and a governing committee the power to direct the energies of the judges to the work of the court, thereby fixing upon known individuals responsibility for the due administration of justice and the keeping of the judges on the bench subject to supervision and discipline.

Fourth: The installation of a simplified practice and procedure.

Fifth: Utilizing masters or assistant judges to aid in the dispatch of non-contentious business or to frame the issues in contested causes.

Sixth: An improvement in the method of selecting and retiring judges.

I shall consider these subjects in their order.

I.

Consolidation of the Courts.

Before the Judicature Acts the English courts of general jurisdiction were twelve in number—eight having original and four having appellate jurisdiction.[3]

The Court of Chancery was composed of the Lord Chancellor, two Lord Justices of Appeal, the Master of the Rolls, and three Vice-Chancellors. The last four of these had separate courts in which they heard cases in the first instance. An appeal lay from a single Justice to the Court of Appeal in Chancery composed of three Chancery Judges. From this there was an appeal to the House of Lords.

[1] 36 & 37 Vict. ch. 66.
[2] 38 & 39 Vict. ch. 77.

[3] The description of these courts is taken from an article in 8 Amer. Law Rev., pp. 256-258, entitled "The Supreme Court of Judicature Act, and Law Reform."

The common law was administered by the three courts of the Queen's Bench, Common Pleas and Exchequer. The first two were composed of a Chief Justice and five puisne Justices, and the last of a Chief Baron and five junior Barons. From each of them there was an appeal to the Exchequer Chamber composed of the judges of the other two courts. From the Exchequer Chamber an appeal lay to the House of Lords.

The other courts, besides some local courts, were the Court of Probate, the Court for Divorce and Matrimonial Causes, the Court of Admiralty, and the London Court of Bankruptcy. One judge sat in the Probate and Divorce Courts and one judge each in the Court of Admiralty and the Court of Bankruptcy. Appeals from the Courts of Probate and Divorce were taken to the House of Lords; from the Court of Admiralty to the Privy Council, where they were heard by the Judicial Committee. Appeals from the Chief Judge in Bankruptcy were taken to the Court of Appeal in Chancery and from there in certain causes to the House of Lords.

The main objection to this system of courts was that the jurisdictional lines between them were hard and fast. If you were in the wrong court you must begin all over again. If you had a choice of courts you might be successful in one and lose in the other. If several persons had an action arising out of the same transaction some might succeed and others fail.[4] If a litigant was entitled to several kinds of relief arising out of the same facts he must pursue each relief separately in a different court and in a different suit. So, if one were liable at law or had a defense in equity he might be forced to institute a separate suit in the Chancery Court to secure a defense to a suit in the Queen's Bench.

Then the judges in one court were limited in their right to sit elsewhere. If one court had little to do its judges could not help out another which had too much. The existence of these several courts largely independent of each other, and with only a very remote ultimate reviewing body in the House of Lords, tended to develop and keep alive as many systems of practice and procedure as there were courts.

It was the very first care of the Judicature Act of 1873 to sweep away these jurisdictional lines by consolidating all of the above mentioned courts into a single Supreme Court of Judicature, in which was vested all the judicial power of the state excepting the appellate jurisdiction of the House of Lords and the jurisdiction for petty causes of the County Courts.

This Supreme Court of Judicature was then divided into two principal branches—the High Court of Justice having all the original jurisdiction of the Court and the Court of Appeal exercising all the appellate jurisdiction of the Court.

The judges of the old courts were continued as the judges of the new, with corresponding positions as nearly as might be.

But even with this consolidation of the courts themselves the different kinds of jurisdiction, especially law and equity, would still have remained, each to be invoked by a separate procedure, just as in the Circuit Courts of this State, which administer both law and equity. The jurisdiction of the court over each kind of cause must be kept separate and invoked by a separate procedure. The Judicature Act of 1873 took care to eliminate fully and completely any difference between law and equity as a jurisdictional matter. This was done by providing a series of rules for the concurrent administration of law and equity. It has been said that these were drawn by Lord Cairns. Whether that be true or not, their comprehensiveness and effectiveness for the result desired have never been excelled. For forty years they have stood the test of actual experience and have not been found wanting. The following is a brief summary of these provisions:[5] In every cause the court is to give effect to all existing rights and duties, whether they exist by common law or

[4] See First Report of the Judicature Commission as summarized in 47 Law Times, p. 4.

[5] This is taken from the Article in 8 Amer. Law Rev., 256-260, above referred to.

equity, or are created by statute, and to take notice of all equitable matters which incidentally appear. Each party is to receive such relief upon equitable grounds against the claim of any other party as he would have received in a suit in equity. If a defendant claims any relief connected with the subject of the cause from any person who is not a party, the latter may be made a party by order of court; and if it appears that the defendant is entitled to the relief against him which he claims, it is to be given. Instead of restraining causes by prohibition or injunction, it is provided that whatever would have been the ground for an injunction may be relied on by way of defense. If it be the ground only for a temporary injunction, a stay of proceedings may be granted on a summary application. In every case, all matters connected with the subject of the cause are to be adjudicated, so that multiplicity of legal proceedings concerning them may be avoided; and whenever there is any conflict or variance between the rules of equity and those of common law with reference to the same matter, the rules of equity shall prevail.

II.

Specialization by Judges in the Handling of Judicial Business

In the arrangement of courts which obtained before the Judicature Acts an indispensable specialization in their work by the judges had been obtained. The judges in the King's Bench sat for the most part in civil and criminal jury trials. The judges of the Common Pleas and Exchequer handled jury trials in civil causes at law in many of which the jury was waived or of comparatively little importance in deciding the issues. The Chancery Judges confined themselves exclusively to the chancery business in which there were no jury trials. Such a thing as rotation by these judges about among the different sorts of judicial business was unknown because they could sit only in the courts of which they were members. In the same way the judges holding the Probate and Divorce Courts sat always in those courts. The judge holding the Admiralty Court and the judge holding the Bankruptcy Court also devoted themselves to the work of their respective courts exclusively. The appeals also were divided and went to special courts of appeal. The appeals from the Chancery Court and Bankruptcy Court went to the Court of Chancery Appeals. Appeals from the King's Bench, Common Pleas and Exchequer went to the Exchequer Chamber. Appeals from the Probate and Divorce Courts went direct to the House of Lords and from the Admiralty Court to the Privy Council.

The authors of the Judicature Act of 1873 in merging all the judicial power into one court had no idea of abandoning this sound principle of specialization in the work of the judges. The suggestion that all the judges of the Supreme Court of Judicature should rotate about among all kinds of business, original and appellate, would have been so incongruous and grotesque as to be practically unthinkable. To preserve the specialization of the judges in different classes of judicial business the framers of the Act at once separated the original jurisdiction of the court from the appellate jurisdiction. Then they divided the original jurisdiction of the High Court among five divisions: Chancery, Queen's Bench, Common Pleas, Exchequer, Probate and Divorce, and Admiralty. By a rule of the court itself these have been reduced to three and now are the King's Bench Division, with seventeen judges, the Chancery Division, with seven judges, and the Probate, Divorce and Admiralty Division, with two judges. These divisions, however, were not made for the purpose of instituting jurisdictional lines, but as the Act recites[6] "for the more convenient dispatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any divisional court, or for any judge of a different division from his own)."

The basis upon which the cases are distributed among the different divisions is on the surface somewhat traditional. The Probate, Divorce and Admiralty Division apparently succeeds to the business of the

[6] Sec. 31, J. A. 1873.

old Probate Court, the Matrimonial and Divorce Court, and the Admiralty Court. The King's Bench Division apparently succeeds to the business of the Common Law Courts, and the Chancery Division to the cases formerly brought in the Chancery Court. In reality, however, the tendency is very strong to draw the line between cases tried by a jury and cases tried without a jury. The King's Bench is primarily the division for handling jury trials, civil and criminal. There has been no suggestion that the judges in the High Court should specialize in the trial of criminal cases alone. That field is evidently regarded as too narrow. The Chancery Division is primarily the court for the trial of cases heard without a jury. The tendency to draw the distinction between cases tried with and those tried without a jury is illustrated by the recent proposal that cases in the King's Bench where a jury is not used, should be assigned for trial to judges of the Chancery Division. The reason given for this is that the Chancery Judges are trained to determine questions of fact and to apply the law to the evidence and perform that work better than judges who habitually shift the responsibility for the ultimate decision of questions of fact to the jury *a*.

The Lord Chancellor, the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division are ex-officio members of the Court of Appeal. They are also members of the High Court of Justice, so that they may sit either in a division of the High Court or the Court of Appeal, as the exigencies of business require. In the handling of their dockets in the different divisions of the Court of Appeal there is some specialization. One of the divisions of the Court of Appeal is regularly manned by two Chancery Judges *b* and one King's Bench division Judge and the Chancery Appeals are regularly sent to it. Another division of the Court of Appeal is manned by two judges who have been connected with the work of the King's Bench Division, and the appeals from the King's Bench are regularly sent to it.

Any inclination on the part of the judges to rotate about among the different kinds of judicial business (if such an idea ever occurred to any English Judge, which I doubt) was met by the assignment of each judge of the Supreme Court permanently to a place in the Court of Appeal or in some division of the High Court. This was done in the terms of the Act "by the Crown under its sign-manual," which was given power also to transfer a judge from one division to another.[7] As a matter of fact, this probably means that the Lord Chancellor or the Prime Minister for the time being, or both, have that power *c*. I believe it has practically never been used except where the transfer is made by way of promotion. The judges take their place in a particular division and stay there. Any judge, however, may, with his consent and upon the request of the Lord Chancellor, sit in any other division of the court temporarily.[8]

Thus are the judges held to their specialized judicial work in different divisions of the court and at the same time enabled to move to another division, as the exigencies of the work of the court demand.

III.

The Lord Chancellor, the Heads of Divisions, the Governing Committee

In every English Court composed of several judges the presence of a chief who had more power and position than his brothers in the same court had always been accepted. This headship was of great advantage, for it designated an individual who was responsible for the work of the court over which he presided and the proper activities of the members of the court under him. The framers of the Judicature Acts, so far from abandoning this principle of power in a chief, and corresponding responsibility, saw clearly that in the new court it must be carried out on a grand scale.

A judicial establishment with thirty-two judges handling in large quantity the

[7] Sec. 31, J. A. 1873.
[8] Sec. 51, J. A. 1873.

most important contentious legal business of one of the richest nations in the world, divided among two divisions of a Court of Appeal with six judges, and three divisions of the Court of Original Jurisdiction with twenty-seven judges, could not run itself. If it tried to do so all flexibility and power to make readjustments between the divisions would soon cease and jurisdictional lines would be drawn and there would be a quick reversion to the conditions which existed before 1873. Or else the judges would begin, as in our American jurisdictions, the more vicious practice of rotation around among the different sorts of cases handled by the court. To guard against both evils, as well as to prevent waste of judicial energy, to impose responsibility for the way the court, as a whole, operated, and to retain a disciplinary power over the judges, a central administrative power for the whole court, with subordinate administrative heads for each division was established by the Judicature Acts.

Each division of the court has its President. The Lord Chancellor is President of the Court of Appeal and the Chancery Division. The Lord Chief Justice is President of the King's Bench division. The Probate, Divorce and Admiralty division has its President. Each of these presiding officers is responsible for the management in general of his division of the court; the way the division's docket is cleared and the manner in which business is distributed and taken up.

The President of each division—that is to say, the Lord Chancellor, the Lord Chief Justice and the President of the Probate, Divorce and Admiralty division, together with four others appointed by the Lord Chancellor, are made a rules committee[9] which has full power to make rules and regulations of an administrative character regarding the conduct of the business of the court, the sittings of the court and the rules of practice and procedure[10] *d*. All rules must be laid before Parliament, if sitting, within 40 days; otherwise 40 days after a new session is begun. J. A. 1875, s. 25. No rule can be adopted either by the rules committee or by the court as a whole unless the Lord Chancellor is included in the majority. This gives the Lord Chancellor a veto power upon the action of the court or the rules committee.

It is clear that the Lord Chancellor is the actual head of the entire judicial establishment. He is the President of the Court of Appeal and of the Chancery Division. He appoints four members of the rules committee and his vote is necessary to any action by the rules committee, as well as to any action by the court as a whole in exercising the rule-making power. In many other ways the supremacy of the Lord Chancellor is indicated. Thus it is at his request that judges may be shifted temporarily from one division to another or judges of the High Court required to attend temporarily in the Court of Appeal. Most important of all is his power to fill many offices in the various clerical departments of the court. With him, together with the Prime Minister, rests the power of promoting judges from the High Court to the Court of Appeal *e*. In his hands alone is the power to fill vacancies occurring in the High Court.

One advantage of such a hierarchy of administrative officers among the judges which is frequently overlooked and cannot be too strongly emphasized, is the protection which it affords against judicial tyranny, abuse of judicial discretion and individual and collective slackness on the part of the judges. There is no judge so liable to acquire brusque and tyrannical ways or become lazy and useless, as one of a number of judges in the same court who sits alone in his own court room with his own independent jurisdiction, subject to no administrative authority and liable only for reversals on points of law by a court of appeal. It matters not whether he be elected at the polls or appointed, excepting that in the former case his tyranny may be tempered with discretion, or his laziness better concealed. The best protection against men of this stamp is the fact that there is over them an administrative power

[9] This is under the Judicature Act of 1881, sec. 19.

[10] Judicature Act of 1875, sec. 17.

responsible for the efficient working of the court; having control over the sort of work each judge shall do, and to which each judge must look for promotion. Such an administrative power makes not only for courtesy and fairness from judges, but prevents actual slackness in the character of work done and keeps their ambition fresh. Under the leadership of a chief, judges may become members of a crack team and as such have the effectiveness of their division of the court at heart. An *esprit de corps* is thus built up which may accomplish wonders.

IV.

Simplified Practice and Procedure

I have noticed from time to time that lawyers who are in favor of a simplified practice and procedure refer to the Judicature Acts as if they were practice codes laying down a few general principles of practice and procedure which were then left to be supplemented by rules of court.[11] This, I think, conveys a wholly erroneous impression. The Judicature Acts as legislation have practically nothing to do with practice and procedure. They certainly do not lay down any general principles of practice and procedure *f*. Even the abolition of the distinction between law and equity is not a matter of practice and procedure, but of jurisdiction and substantive law. The Judicature Acts leave the whole matter of practice and procedure to the rules committee of the court. This power to make rules of practice and procedure is very broad. It includes the power in effect to repeal any Act of Parliament inconsistent with the rule made.[12]

A schedule of the rules to be in force upon the taking effect of the Judicature Act of 1873 was attached to the Act. It contained fifty-eight rules or orders and these covered the whole subject of forms of action, summons, parties, pleadings, discovery, place of trial, evidence, interlocutory orders, costs, new trials and appeals.[13] These have been superseded by the rules of 1883, which were in force in 1908. These are included in seventy-two orders; but most of the orders have a number of sub-sections, so that in all there are probably over a thousand sections applicable to practice and procedure. Together with the annotations they take up 1119 pages in Snow's Annual Practice for 1908. The following partial summary of the principal features of the first rules will indicate the sweeping character of the changes wrought at the beginning:[13a]

"Henceforth all actions at common law, suits in equity and admiralty, and proceedings in the Court of Probate, are to be instituted in the High Court by a proceeding, which to be called an action; but, subject to rules of court, other proceedings are to be taken in the same manner as before.

"Every action is to be commenced by a writ of summons, endorsed with a statement of the nature of the claim made, or of the remedy required, and specifying the Division of the Court to which it is to be assigned. The forms of writs and endorsements are to be prescribed by rules of court. Personal service of the writ is required, but substituted service may be ordered by the court for special reasons.

"In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, the summons may be specially endorsed with the particulars of the amount sought to be recovered; and in such case, if the defendant does not appear, the plaintiff may have final judgment for an amount not exceeding the sum endorsed, and interest; but such a judgment may be set aside or varied by the court upon proper terms. When the defendant appears, and the writ is thus specially endorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that, in his belief, there is no defense, call on the defendant to show cause why he should not have final judgment; and unless the defendant shall satisfy the court that he has a good defense, or discloses facts which are suffi-

[11] Delays of the Law, by William H. Taft, 18 Yale Law Journal, 32.
[12] Judicature Act of 1875, sec. 24.
[13] 2 Law Magazine and Review, n. s., p. 932.
[13a] 8 Am. Law Rev., 263-266.

cient, in the opinion of the court, to entitle him to defend, judgment may be given for the plaintiff. Permission to defend the action, however, may be granted on such terms as the court thinks just.

"No action is to be defeated by the misjoinder of parties, and in every action the court may deal with all matters in controversy so far as regards the interests of the parties before it. At any stage of the proceedings, the names of any parties improperly joined, whether as plaintiffs or defendants, may be struck out, and the names of any who ought to have been joined may be added. Any two or more persons who claim, or are liable, as copartners may sue, or be sued, in the name of their firm; and, in such cases, any party may require a statement, on oath, of the names of the partners. When the defendant claims relief over against any other person, or when from any cause it appears that a question in the action should be determined between the parties and any other person, an order may be made, after notice to the latter, for having the question determined. Whenever a plaintiff is in doubt as to the person from whom he is entitled to seek redress, he may join two or more defendants, so that the question as to which of them is liable, if any, may be determined as between all the parties. The plaintiff may also join, as parties to the same action, all or any of the persons severally liable on any contract, including parties to bills of exchange and promissory notes. When the cause of action survives, the action is not to become abated or defective by the death, marriage, or bankruptcy of any of the parties, or by the assignment, creation, devolution of any estate or title *pendente lite*.

"As to pleadings, unless the defendant, at the time of his appearance, shall state that he does not require a statement of complaint, the plaintiff must, within a certain time, file and deliver to him a printed statement of his complaint, and the relief or remedy which he claims. The defendant must also furnish a printed statement of his defense, set-off, or counter-claim, and the plaintiff, in like manner, a statement of his reply. These statements are to be as brief as the nature of the case will permit. A demurrer to any statement may be filed in the manner to be prescribed by the rules of court. These statements may be altered at any stage of the proceedings, by leave of court, and any matter may be ordered to be struck out which is scandalous, or which may tend to prejudice or delay a fair trial. When the issues of fact in dispute are not sufficiently disclosed by the statements, the court may direct issues to be prepared.

"A defendant may set up, by way of counter-claim against the plaintiff, any right or claim, whether it sound in damages or not, and the court shall pronounce a final statement in the same action, both on the original and cross claim. But if the court be of opinion that the counter-claim cannot conveniently be disposed of in the pending action, it may refuse permission to the defendant to avail himself of it. When a counter-claim is established, if the balance is in the defendant's favor, the court may give judgment for him for the balance. Subject to rules of court, the plaintiff may unite in the same action several causes of action, but the court may order separate trials of such as cannot conveniently be tried together.

"The parties are entitled to exhibit interrogatories, and obtain discovery from one another. Any party may give notice to another, in whose pleadings or affidavits reference is made to any document, to produce it for his inspection, and to permit him to take copies. The court may also order the production, upon oath, of such documents relating to any matter in question as it may think right.

"There is to be no local venue for the trial of any action; but the plaintiff may choose the county in which he wishes the trial to be had, and the action shall be tried in the place which he names; if he names no other place of trial, it shall be tried in Middlesex; but a judge may order it to be in any other place.

"Actions may be tried in either of four modes, namely, before one or more judges, or before a judge sitting with assessors, or

before a judge and jury, or before a referee. The plaintiff may choose also the manner of trial; but the defendant may give notice that he wishes to have the issues of fact tried before a jury, and then they shall be tried in that mode; or he may apply to the court for a trial in any other of the ways mentioned, and the court may determine the mode of trial.

"In the absence of agreement by the parties, and subject to rules of court in particular classes of cases, witnesses at the trial are to be examined *viva voce* and in open court; but when there are sufficient reasons, the court may order that particular facts may be proved by affidavit, or that a witness may be examined by interrogatories before an examiner, when his attendance in court ought to be dispensed with. Upon interlocutory applications, evidence may be given by affidavit; but the court may order the person who makes an affidavit to attend for cross-examination.

"Either party may call upon the other to admit any document (saving all just exceptions) and, in case of refusal to admit, the costs of proving it shall be paid by the party who refuses, whatever may be the result of the action, unless the court certify that the refusal was reasonable. Power is also given to the court to order the inspection of property, or the entry of any persons into land or buildings in possession of any party, and observations to be made for the purpose of obtaining full information and evidence.

"The costs of proceedings are to be in the discretion of the court; but the rules are preserved by which trustees and other persons are entitled to costs out of a particular estate or fund.

"A new trial is not to be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless the court is of opinion that some substantial wrong or miscarriage has been thereby occasioned. Bills of exceptions and writs of error are abolished, and all appeals to the Court of Appeal are to be by way of rehearing, and to be brought by notice of motion in a summary way; and no appeal is to operate as a stay of execution or of proceedings, except so far as the court may order."

V.

Assistant Judges

Under the Judicature Acts the principle is applied of taking from the highly paid judge all work which is of a non-contentious character or preliminary to defining the issue in a contested case. This is done by means of masters.

There are twelve masters attached to the chancery division. In 1908 four masters served each set of two chancery judges. They made investigations and took accounts and performed many other services under the immediate direction of the judge. All their authority is derived from the judge to whom they are assigned and everything they do is done in his name or by way of certificate.[14] It would seem that two of these masters are appointed by each one of the six judges regularly sitting in the chancery division, with the approbation, however, of the Lord Chancellor.[15] They are removable by the Lord Chancellor with the consent of any two of the chancery judges without stating any cause for such removal.[16]

Seven masters serve the judges in the King's Bench division. Some at least receive £1500 a year. They are appointed by the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls in rotation as their places become vacant.[17] They hold during good behavior, but may be removed for reasons assigned in the order of removal by the Lord Chief Justice and the Master of the Rolls with the approval of the Lord Chancellor *g*. The work of these masters is a novelty in this country in common law cases. They have been called the "time-savers," and their work is thus described by the late Mr. Thomas Leaming:[18]

"At a certain hour the Master takes his seat at a desk with a printed list of 'appli-

[14] 9 Laws of England, p. 67.

[15] 15 & 16 Vict. ch. 80, sec. 16, which seems to be regarded as in force in the Article 9, Laws of England, p. 68.

[16] 15 & 16 Vict. ch. 30, sec. 25.

[17] 42 & 43 Vict. ch. 78, sec. 9.

[18] Philadelphia Lawyer in the London Courts, pp. 117-122

cations without counsel' or 'applications with counsel.' He nods to the uniformed officer at the door who admits the solicitors engaged in the cause which happens to be first on the list of cases 'without counsel.' The solicitors stand before the Master with a shelf upon which rests books or papers; one side then states its demand and the other its objection in the briefest and most direct manner. The Master's immediate oral decision, accompanied by imposition of the costs and a few scratches of his pen on the back of the summons, indicates to the officer the opening of the door to admit the next case. By actual count twenty-seven cases may thus be disposed of in one hour and thirty-two minutes—an average of a little more than three minutes each. Of course there is a right to appeal which, however, is rarely exercised.

"As the door opens two solicitors hurry in. There are no salutations nor introductory remarks and the business proceeds abruptly:

Plaintiff's solicitor: 'Master, we claim £50 judgment for rent.'

Master to defendant's solicitor: Do you admit the amount?'

Defendant's solicitor: 'Yes, but we claim a set-off.'

Master (endorsing a few words on the summons): 'Judgment of rent £50 with stay of execution until counter-claim is tried.'

Defendant's solicitor: 'If you please, Master.'

"This expression is the universal vernacular with which the defeated party accepts the judgment of a master or judge in all courts. The expression is not an interrogation but is equivalent to 'as you please.'

"Out they go and the next enter; here the defendant asks for delay, and gets seven days which is endorsed on the summons for £1,000. Defendant requires four days' delay.

Master: 'What is the defense?'

Defendant's solicitor: 'Master, I don't know—a recent agreement has been made between the parties which I have not yet seen.'

Master: I'll give you four days, but you must pay the costs of the adjournment; thirteen shillings and fourpence.'

Defendant's solicitor: 'If you please, Master.'

"The next summons for judgment. As this is denied, the parties agreed to try it before the Master on the following Thursday without a jury.

"Then follows a summons by defendant upon plaintiff for particulars of goods sold and delivered. Both parties are dealers in Japanese bulbs, and the sale was made subject to arrival in England safe and sound. The defendant demands particulars of the plaintiff as to who were his customers. The plaintiff objects to disclosing his business and the written summons, containing the request for particulars, is gone over rapidly by the Master. Such parts of the request as, in his opinion, ought not to have been demanded, because they pry into the plaintiff's private affairs, are eliminated by a stroke of the Master's pen and an order is made at the bottom in an abbreviated form, imposing the costs of the summons upon the plaintiff. This means that the plaintiff is obliged to furnish the defendant, in so many days, all the particulars which the Master did not strike out, and must pay the defendant the costs of the application.

"A moment is consumed in giving judgment in an uncontested case for £1,800 with costs of £8, 16s, 0d.

"Then comes a breach of promise case. The defendant asks for an order upon the plaintiff for a statement of claim and discovery of correspondence, which is granted. As most of the witnesses are in London, the defendant wants to try the case here, but the plaintiff wishes to try it in Manchester, where the parties live. The Master thinks it is easier to bring two people up from Manchester than to take a dozen down from London.

"Next is a summons for directions:

Master: 'Statement of claim in ten days.'

Plaintiff's solicitor: 'Defense in ten days.'

Plaintiff's solicitor: 'Yes, Master.'

Master: 'No counter-claim?'
Defendant's solicitor: 'No, Master.'
Master: 'Documents?'
Both solicitors: 'Large number.'
Master: 'All parties in London?'
Both solicitors: 'Yes.'
Master: 'Any question of law?'
Both solicitors: 'No.'
Master: 'Next case.'

"And he at once endorses a few words on the bottom of the summons.

"Then a defendant appears in person:
Master: 'Do you owe the £26?'
Defendant: 'Yes, sir.'
Plaintiff's solicitor: 'We only want judgment for £21 because this morning he paid £5 on account, and he agrees to pay £3 a week, so that we will not issue execution if he does this.'
Master: 'I'll give you judgment generally for £21, but you write defendant a letter stating that you will not issue execution as you have just stated.'

"Another defendant appears in person:
Defendant: 'I've got no defense; all I want is time.'
Plaintiff's solicitor: 'We'll do nothing until Monday as we think he means to pay.'
Master: 'All right, it is understood you will do nothing until Monday.'

It is an interesting fact to note that the Probate Court of Cook County for many years has applied the same principle in the handling of the business of Cook County. Cook County since the establishment of the Probate Court in 1877, has always been served by only one Probate Judge, yet the business of the court has increased enormously. The fact that one judge can still do the work of the court and yet keep the docket of the court clear is due to the fact that he has three assistant judges. The non-contentious work of the court is classified and each assistant judge has his special class of work to take care of. He becomes expert in the handling of it. He becomes so familiar with the way the judge rules that lawyers frequently take the decision of the assistant judge without bothering the judge of the court with the matter. The result is that only those matters which call for the exercise of the personal discretion of the judge or are contested matters come before him. Thus an enormous amount of business is well taken care of without adding other highly paid judges to the court who would in any case dislike the burden of handling uncontested business.

VI.

Mode of Selecting and Retiring Judges

The strong point in the appointment of judges in England has been that every man appointed is certain to have had a severe service test before he became eligible for appointment. The judges are selected from the barristers. That means that they cannot be men whose professional practice has been that of client caretaking as distinguished from handling contentious matters in the courts. Then the judge was always selected from among those barristers who have had a successful career at the bar, which insures experience and familiarity with the handling of contentious business. Furthermore, a lawyer selected for a place in the court handling common law cases was always taken from the common law bar, which practiced before the common law courts. A lawyer given a place on the chancery bench was taken from the chancery bar. This insured a judge who was expert in the contentious work of the particular court to which he was appointed *h*. These rules in the selection of judges have all been retained under the Judicature Acts. Most of them are customary *i*. The Judicature Acts provide that a judge appointed to the High Court must be a barrister of not less than ten years standing.

These service tests for the appointment of English judges are in striking contrast with the lack of all such tests in this country. Here a man is eligible when he has been admitted to the bar and practiced a few years. His practice may have been entirely that of a client care-taker in the office and yet he may secure a place on the

bench and, in fact, frequently does, and there tries cases that he has had no familiarity with whatsoever in practice. The lawyer of forty-five or fifty who has succeeded in a practice in the courts will not usually take a place upon the bench. Hence resort must be had to younger men of thirty-five or forty who are promising, but not yet successful. This certainly eliminates all service tests and insures the selection of judges who are at least to start with novices in the work that they are called upon to perform.

The weak point in the appointment of the English judges before the Judicature Acts was this: They were appointed by the Lord Chancellor for the time being. He always has been a political officer. He goes in and out of office with his party as a result of a general Parliamentary Election or the loss of his party's majority in the Commons. Hence the power which appoints judges in England is not at all independent politically, but on the contrary partisan. This partisanship was very marked in the first part of the 19th century when a Tory or a Liberal administration appointed judges only from the lawyers who were allied with the party in power. Such partisan appointments did not cause any embarrassment to the Lord Chancellor because in naming judges to the King's Bench, the Common Pleas, Exchequer, and other courts, excepting the Court of Chancery, he was filling vacancies in courts with which he had nothing to do and for the work of which he had no responsibility. He gave the court a new judge from the barristers practicing before it and let the court go its way *j*.

The Judicature Acts have changed this very materially and for the better. By making the Lord Chancellor the administrative head of the entire judicial system and giving him power over the conduct of business in every branch of the court through the rules committee and in other ways, responsibility has been forced upon him and incidentally upon the cabinet in power, for the proper administration of justice in all departments. This has very noticeably caused a decline in politically partisan appointments and has made for an increase to appointments based entirely upon merit.

The recall of judges provided for by the Judicature Acts is scarcely ever referred to. We have already noticed that the masters while they hold during good behavior, may be retired with the approval of the Lord Chancellor at the instance of two judges over them and without any proceeding resembling a trial or impeachment. In the case of the chancery masters no cause need be specified. In the case of the masters attached to the King's Bench division cause must be specified in the order of removal, but none need be approved. These are direct applications of the principles of recall by a superior authority. With regard to the judges themselves the Judicature Act[19] provides that they shall hold during good behavior, "subject to a power of removal by her Majesty on an address presented to her Majesty by both Houses of Parliament." Thus they may be recalled as in Massachusetts by the legislature without impeachment.

Conclusion

The fundamental principles upon which the English Judicature Acts are based are

First: The elimination of all jurisdictional lines between courts by the merging as follows:

of the whole judicial power in one court and the abolition of the distinction between law and equity as a jurisdictional matter.

Second: The specialization by the judges in different classes of judicial work by separating the court into divisions, each handling different sorts of cases, and while permitting judges to sit in any division, keeping each judge at work regularly in a particular division.

Third: The application of the principle of placing in an administrative head and a governing committee the power to direct the energies of the judges to the work of the court, thereby fixing upon known individuals responsibility for the due admin-

[19] 1875, sec. 5.

istration of justice and the keeping of the judges on the bench subject to supervision and discipline.

Fourth: The principle of lodging in the administrative head and governing committee full power to make, alter and amend all rules of practice and procedure.

Fifth: The utilization of masters or assistant judges to aid in the dispatch of non-contentious business or to frame the issues in contested causes.

Sixth: The application of the principle that the administrative head of the court shall be a political officer, changing as the party which he represents retires from power, and the lodging of the power to fill vacancies among the judges in that administrative head.

The experience under the Judicature Acts makes it clear that these are sound principles. A system of courts serving a great metropolitan district or an empire state with several millions of inhabitants and an enormous judicial business cannot neglect any of these principles without impairing the efficiency of its judicial system. To neglect all of them is practically to eliminate the existence of courts entirely.

In the application of these fundamental principles no system can be perfect and no two applications will be the same. It is not only inevitable, but proper, that in applying the principles of the Judicature Acts in an American jurisdiction we should cut loose entirely from the particular form of application made under the Judicature Acts and adjust the application of these principles to our own conditions and traditions.

If we were to provide for a chief justice of the state or for a county like Cook, to be elected every six years, to whom was given the power to fill all vacancies occurring among the judges in the principal courts of the state, or in the courts of Cook county, as the case might be, such appointees to hold during good behavior, subject, however, to a power in the electorate, upon a petition signed by a certain number of voters, to declare the place of any judge vacant at any time, we should be in fact applying in part the principles operative in regard to the selection and retirement of judges under the Judicature Acts. If we added that no one should be so appointed whose practice had not been principally in the handling of litigation in the courts for at least ten years, we should be adopting the principle of a service test for appointees similar to that in force under the Judicature Acts.

Whenever we place non-contentious matters in the hands of assistant judges and thereby relieve the principal judge of work which a less highly paid officer can do just as well, we are applying an important principle of the Judicature Acts.

Whenever we place the power of making rules of practice and procedure in the hands of the highest court of the state we are applying a principle of the Judicature Acts.

Whenever we attempt to make our judges specialize in different classes of judicial work we are applying one of the most fundamental and important principles of the Judicature Acts.

Whenever we consolidate our courts so as to eliminate all jurisdictional lines and whenever we take any step toward breaking down the distinction between law and equity as a jurisdictional matter, we are adopting a principle which is at the very foundation of the Judicature Acts.

Let us set our faces toward the attainment in practice of these sound principles, regardless of any particular form. Let us move in the direction of their adoption in a form which fits in with the general character of our institutions. If we do not do this the outlook for any improvement in our administration of justice is indeed dark.

APPENDIX A.

PARTIAL BIBLIOGRAPHY REGARDING JUDICATURE ACTS

46 L. T. 483, 47 L. T. 4 Summary of First Report of Judicature Commission.

53 L. T. 315. Second Report of Judicature Commission.

56 L. T. 418. Third Report.

1 Law Mag. & Rev. (n. s.) 695. Summary of Report of Judicature Commission.

27 Law Mag. & Rev. 143. Comment on First Report of Judicature Commission.

2 Law Mag. & Rev. (n. s.) 932. Summary of Schedule to First Judic. Act.

2 L. Q. R. 1. Law Courts under the Judicature Acts (criticism of some features).

6 N. J. Law Journal. 5, English Judicial System.

English Judicial System, 16 Am. Law Rev. 873.

Judicature Acts:

1873—36 & 37 Vict. ch. 66.

1875—37 & 38 Vict. ch. 77.

1879—42 & 43 Vict. ch. 78.

1884—47 & 48 Vict. ch. 61.

16 & 17 Vict. ch. 80.

9 Laws of England, 51.

Notes Supplied By Mr. Reginald Primrose, Inner Temple, Barrister at Law

a. I do not think this is really the dividing line between the Chancery and King's Bench Divisions. By the Judicature Acts most matters formerly within the peculiar jurisdiction of the Chancery are assigned to the Chancery Division, which retains the feature of never having a jury. As a matter of fact there are plenty of non-jury cases heard in the King's Bench Division. On Nov. 3 of this year (1913) the list of causes standing for hearing shows 195 special jury, 122 common jury and 98 non-jury; there are also 46 in the Commercial List, many of which will be tried by a judge alone.

Of course every criminal case must be heard with a jury.

I confess the suggestion that non-jury actions should go to the Chancery judges is new to me; at the present moment it is not "practical politics."

b. I think the word "lawyers" is better here than "judges;" the latter might be thought to imply that the Lords Justices of Appeal are or have been puisne judges of the Chancery or King's Bench Divisions, whereas it not infrequently happens that a barrister is appointed straight to the Court of Appeal.

c. I incline to think that it would be more accurate to say that the power is exercisable by the Lord Chancellor only. The Prime Minister has no concern with judges of the High Court; he appoints Lords Justices and the Lord Chief Justice. If it was wanted to transfer one of these to some other duties possibly the Prime Minister might be consulted—but it is exceedingly unlikely that such transfer would ever take place.

d. By the Judicature (Rules Committee) Act of 1909 two barristers and two solicitors are also to be appointed by the Chancellor to serve on the Rules Committee.

e. Appointments to the Court of Appeal are in the gift of the Prime Minister only. It may be, as a matter of courtesy, that he would consult the Lord Chancellor; but he need not do so unless he likes. I do not think therefore it is accurate to say that the Chancellor has anything to do with these appointments.

f. This seems to me expresses a little too strongly. The object of the Judicature acts was to arrive at greater simplicity in legal procedure; to effect this object it was necessary to clear away the old system of separate courts administering different systems of law and substitute one court administering the same system. Having done that the way is cleared for new methods, which are in fact contained in the Schedule to the Act. [This original Schedule of procedure was published in this JOURNAL, vol. IV., No. 4, p. 115.] Personally I should say that that Schedule does represent the object of the Act and its most important part. But of course it is true that the Acts did other things besides this.

g. As to the masters:

1. They all receive the same salary, viz: £1200 a year, rising by three annual increments of £100 to £1500—at which figure they remain.

2. Appointment, dismissal, etc. The K. B. D. masters are appointed as the text says. The Chancery masters are appointed not by the judges, but by the Lord Chancellor. Their tenure of office is really the same, though there may be a technical difference of historical interest merely. For practical purposes it most accurately describes their position to say that they can be dismissed by the officers appointing them, without any recourse to Parliament, in the event of improper conduct.

I have never heard of this being done; in fact a master would never be dismissed unless he were guilty of some serious offense, e. g. accepting bribes, or if in his private life he got involved in some serious scandal, or for some similar reason. Unless something of this sort happens he is practically as secure of his tenure of office as is a judge. He would never be dismissed without being told the reason, though he would have no right to any judicial inquiry.

h. This paragraph quite well expresses the facts. In the selection of a judge the primary consideration must always be his standing in the profession; it would be impossible for a man to be chosen who was not in substantial practice at the bar; moreover, the nature of his practice would be

important; a man who appeared only in the Chancery Court would not be put onto the bench of the K. B. D.

i. Perhaps it would be better to say: These considerations, amounting almost to rules, governing the appointment of judges, have been in no way affected by the Judicature Acts.

j. I am afraid I cannot agree that the Acts have had the effect here claimed for them.

No doubt at the beginning of the 19th Century improper considerations did affect the appointments to the bench to a far greater degree than today; political and family reasons often entered in. But the change is really due to the change that has come over English public life generally; at that time the House of Commons (still more the Lords) was divided into two great parties, both aristocratic; the difference between a Whig and a Tory was not one of class; they were all members of the upper class. The result of this was that each party tacitly agreed that the party in power should fill places from among its friends and supporters. If the Whigs perpetrated a somewhat gross "job" the Tories had not much to say about it, for they were looking forward to doing the same thing themselves.

Now things are changed; in the House of Commons you find members of every class; it is no longer a close corporation. If one side makes an improper appointment there is at once an outcry. The Lord Chancellor is a member of the Cabinet and by our constitution the Cabinet as a whole is responsible for the acts of any member. Therefore a Chancellor would not readily put on the bench some man who was unfitted for the position, thereby bringing upon the whole government, as well as upon himself, the hostility of public opinion, which would be raised by the opposition in Parliament.

It is this new force of public opinion, a creation really of the 19th Century, that has made the difference.

Even today political considerations do sometimes enter into judicial appointments. I think it would be generally agreed that there are one or two judges on the bench, formerly in the House of Commons, who, though quite fitted to be judges and performing their duties exceedingly well, yet owe their appointment largely to the fact that they were political supporters of the ministry in power. After all, there are always plenty of men well suited for the bench, and of these, if one has political influence in addition, that may just make the difference.

Another thing may be added; no Chancellor has ever (or, as far as one can see, will ever) appoint to a judgeship a man who is in the House but who supports the opposition.

The Pennsylvania Constitution

Comment was made in the December number of the JOURNAL on the judiciary article in the draft constitution produced during the past year by the Pennsylvania Commission of twenty-five. Shortly after publication a change was made which eliminates the word "proof" from the section which delegates rule-making powers to the Supreme Court. The power to "regulate the activities of any public or private agency rendering legal aid" was also stricken from the text. The reason for the latter change was that a great part of such activities would be outside of any court, and as such purely administrative in nature.

The Commission's secretary, Dr. William Draper Lewis, informs us that the Commission was not created to take the place of a constitutional convention, but instead to perform such work as would properly be done by a committee in preparation of an elaborate preliminary report. The work of the Commission will be submitted to the legislature and if its recommendations are adopted, the members of a convention will be elected next fall. In such event the report will be of great value to the convention, both by reason of its completeness and because doubtless most of the men who participated in the work of the Commission will be elected as delegates to the convention.

A Correction

We are requested to make a correction respecting the condition of the work of the Circuit Court of Milwaukee county as stated in the article of Judge Fowler in the last number of the JOURNAL. The statement there made related to the condition about March 1, 1920. At the present time it is considerably improved. The work now as a whole is from ten months to a year behind, although at the conclusion of the jury work for the present term cases were on trial that had been filed not longer than five months. The judges are steadily and

lately very rapidly catching up with their calendar. There are cases more than a year old on the calendar, but it is not the fault of the court that they have not been more rapidly disposed of. Every case on the calendar at the present term will have been called for trial before the close of the term, although many will have been continued for cause or by stipulation. The advancement of the work is doubtless as far as in any county of the United States with a population as numerous as that of Milwaukee county. This is by no means entirely due to the Board of Judges, although an outside judge has been kept presiding a considerable portion of the time during the last year and not infrequently two at a time have been presiding. It is more due to the employment at the recommendation of the local judges of a calendar clerk whose sole duty it is through notifying and pressing attorneys to have cases always ready for immediate trial, and to the vigor with which this clerk has performed his duty. The judges work with a common jury and upon a common calendar which allows this clerk to work to the best advantage.

Modern English Procedure

Wisconsin Circuit Judges' Board Undertakes Study of Features Which Permit of Economy and Certainty

The following report was submitted recently to the Board of Circuit Judges of Wisconsin. It is understood to be a preliminary report which will later be amplified and given more direct application to procedural progress in that state:

At the last meeting of this Board, the undersigned committee was appointed to ascertain and report whether there is anything in the English Act of Practice that can properly and advantageously be adopted in this state.

The English judicial system consists principally of three courts, the House of Lords, the Supreme Court of Judicature, and County Courts. The House of Lords exercises both legislative and judicial duties. Its judicial duties include the determination of appeals from the Supreme Court of Judicature. County Courts have jurisdiction of matters envolving five hundred dollars or less. There are fifty-seven County Court Judges. They are appointed for life with a salary of $7,500 a year.

The most important court, and the one with which this report principally deals, is the Supreme Court of Judicature. This court has two branches, the Court of Appeal, and the High Court of Justice. The latter branch has three divisions, the Chancery Division, the King's Bench Division, and the Probate, Divorce and Admiralty Division. The business of the appellate branch of the court is ordinarily transacted by five judges called Lord Justices of Appeal. The Lord Chancellor, Lord Chief Justice of England, Master of the Rolls, and certain other judges are ex-officio members of the court. A judge of the trial court may be required to sit as a member of the Court of Appeal. The business of the trial branch, of the High Court of Justice, is transacted by twenty-seven judges, thirty-two masters and various registrars and referees. The duties of the judges are confined principally to the hearing of contested cases. The trial of cases and the hearing of appeals are in the same court, although in different branches. A judge may sit one day in the Court of Appeal, and another day in one of the divisions of the trial court. Most of the trials are held in the City of London. The judges are appointed for life with salaries ranging from twenty-five thousand dollars to fifty thousand dollars a year. The court is authorized to make its own rules to regulate the sittings of the branches and divisions of the court

and of the judges, and to regulate pleading, practice, procedure and costs, and to modify and change such rules as occasion may require. The regulation of the business of the court is, therefore, subject to some limitations, left in the hands of the court instead of being prescribed or limited by legislative authority. The rules which were adopted, made radical changes in practice and procedure. Some of these rules include provisions found in the statutes of states in this country which have adopted code practice, but they go further than the code in their departure from the practice of the common law.

Among the objects sought to be attained by the rules are (1) to secure a decision on the merits of the case and to avoid, as far as possible, a decision which settles only a question of practice or results in a new trial; (2) to avoid delays in the bringing of cases to trial and a waste of time during the trial; and (3) to simplify pleading and narrow the issue, so that on the trial the evidence may be confined to such questions of fact as to which there is a bona fide dispute. These objects are attained, in part, by the imposition of heavy costs on the party, or sometimes on the solicitor who violates the rules, irrespective of which party obtains a judgment on the merits. While costs are discretionary, heavy costs are usually imposed on the defeated party, including the fees of the solicitor. The expenses of the court, including salaries of judges and other officers, are paid out of costs collected, so that the court is of little or no expense to the general public. The danger of a party being subjected to the payment of costs results in many cases being either dismissed, settled or allowed to go by default. Questions of the imposition of costs and the enforcement of rules of practice are handled by subordinate judicial officers.

Forms of pleading to serve as models, but not to be followed literally in all cases, are provided. The pleadings are short and concise. For instance, the form of a complaint for the foreclosure of a mortgage can be written on about half a page of ordinary typewriting paper. The form of a complaint for an accounting or for specific performance covers less than a quarter of such a page. The ultimate fact and sometimes a mere legal conclusion is alleged. In some cases the complaint consists of an endorsement on the summons of the amount claimed to be due on a note, bond or other indebtedness. The general denial is abolished. The denial must be specific. The issue may be narrowed by discovery, written admissions, and other means. One party may serve on the other a written demand that certain specific facts be admitted. If the opposing party, without good cause, fails to admit such facts, he will be penalized with costs.

There are no official court reporters. The notes of the testimony are kept by the judge. Parties sometimes use private reporters, but a reporter's transcript of the testimony, unless adopted by the judge, or where it differs from the notes of the judge, is not controlling. The bill of exceptions is abolished. On appeal the case is heard on the record and on the notes of the judge, on oral argument without any printed brief. The decision on appeal is usually rendered orally at the close of the argument.

The Court of Appeal has the same power to permit amendments as the court of first instance, "together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit or by deposition taken before an examiner or commissioner."

Some of the provisions of the English system would be inapplicable to our judicial system in this state as it is now constituted. Some others might be considered of doubtful advisability. The attention of this Board, however, is called to the following subjects:

1. *Joinder of Parties.*

The English rule provides that "All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions is

alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions, any common question of law or of fact would arise."

The rule also provides that judgment may be awarded against any one or more of the defendants in default or for or against persons whose rights have been determined, without awaiting the final determination of the action as to the other parties. Under this rule separate actions by a husband and wife to recover damages for a personal injury to the wife, or separate actions by a parent and minor child to recover for personal injuries to the child, or actions for damages by two or more persons injured in the same accident, could be joined and tried together before one jury instead of trying but one claim separately, and delaying the trial of the other until a subsequent term, according to the practice in this state.

2. *The General Denial.*

The English rule abolished general denials in pleading, except when the defendant is an infant, lunatic or person of unsound mind, and requires that the answer must deal specifically with each allegation of fact of which he does not admit the truth, except damages. This rule tends to narrow the issue. The rule would work more advantageously if parties were required to confine their pleadings to the material issuable facts stated in a plain and concise manner and without unnecessary repetition, as is now directed by statute in this state. Much good might be accomplished by a rule of court which would prohibit the taxation of any costs for any pleading which violated the provisions of this statute. Where the material facts in the complaint are intermingled with argument, irrelevant details, repetition and unnecessary conclusions of the pleader, it is often difficult to answer except by a general denial.

3. *Demand for Admissions.*

The English rule provides that "Any party may by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on the other party to admit for the purpose of the cause, matter or issue only, any specific fact or facts mentioned in such notice. In case of refusal or neglect to admit the same within six days after service of such notice or within such further time as may be allowed by the court or a judge, the cost of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the case, matter or issue may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable or unless the court or a judge shall at any time otherwise order or direct."

Many facts necessary to be proven on a trial might be eliminated under this rule. The rule is quite similar to the provisions of section 4184 of the Wisconsin statutes, except that this statute is limited to the right to demand the admission of the genuiness of a written instrument. We see no good reason why the statute should not be extended to include other material facts.

4. *Bills of Exceptions.*

The English Practice Act abolishes bills of exceptions. The records in the case, together with the notes of the judge, are used instead. In this state, where the bill of exceptions is made up principally from the reporter's transcript, considerable inconvenience and expense could be avoided by using the transcript, together with the exhibits and written exceptions on file, instead of requiring parties to procure and serve formal bills of exceptions. Under the old equity practice, including the practice in federal court, in equity cases, appellate courts always re viewed the testimony without any bill of exceptions.

5. *New Trials Ordered on Appeals.*

Under the English practice as heretofore referred to, the appellate court may receive additional evidence to supply some defect or omission while the case is pending on appeal. This rule would be inapplicable to a disputed question of fact tried by jury, but it would apply to cases tried without a jury and even in jury

cases it might be material and controlling on some question of fact as to which the record was silent concerning which there was no bona fide dispute. Such a rule, if adopted, would be of easier application if bills of exceptions were abolished. The English rule also provides "A new trial may be ordered on any question without interfering with the finding or decision upon any other question." Much subsequent litigation and expense might be avoided in some cases by the application of this rule which would limit a retrial to questions of fact as to which prejudicial error existed on the former trial.

The above subjects are submitted to this Board without further recommendation as some features of the English practice which might advantageously be adopted in this state. Persons desiring to make further investigation of these subjects are referred to bulletins XI and XIV and the December, 1920, Journal of the American Judicature Society. This Society has formulated and recommended the adoption of rules of procedure published in Bulletin XIV, in 1919. Its rule on joinder of causes of action and on securing before trial the admission of specific facts, are similar in many respects to the provisions of the English practice. A copy of its rule on the latter subject is hereto annexed as EXHIBIT 1. Its rule as to pleading requires every pleading to contain a concise statement of the ultimate facts on which the party relies for his claim or defense. Every pleading is required to be as brief as the nature of the case permits. No provision is made either for a general or specific denial, but instead, the answer of the defendant must contain "a concise statement of the ultimate facts on which he relies for his defense to the action."

Respectfully submitted,

JAMES WICKHAM,
JAMES O'NEILL,
E. RAY STEVENS,
Committee.

EXHIBIT 1.

ARTICLE 32. ADMISSION FOR TRIAL.

Sec. 1. CONTENTS. Any party to an action may, by notice in writing delivered not later than ten days before the trial, call upon any other party, within five days after receiving the notice.

(1) To admit, or
(2) To deny under oath, or
(3) To state under oath what the fact is, according to the best of his knowledge, information and belief with regard to, or
(4) To state under oath that he has no knowledge or information sufficient to form a belief with regard to,
  (a) the existence, due execution, correctness, validity, signing, sending or receiving of any document; or
  (b) the correctness of any specific fact or facts material in the action and stated in the notice; or both.

Sec. 2. EFFECT. Such admission, if made, shall be taken as conclusive evidence against the party making it, but only for that particular section and in favor of the party giving the notice; it shall not be used against him in any other action or proceeding or on any other occasion, and shall not be received in evidence in any other action or trial.

Sec. 3. DEFAULT. If the party receiving such notice fails to comply therewith within the time specified, the facts therein stated shall be taken to be admitted.

Sec. 4. EXPENSE. In case of refusal to make such admission the reasonable expense of proving any fact or document mentioned in the notice shall be paid by the party so notified in any event, unless the court is satisfied the refusal was reasonable.

Sec. 5. WITHDRAWAL. The court may allow the party making any such admission to withdraw or amend it upon such terms as may be just, and may, for good cause shown, relieve a party from the consequence of a default under Section 3.

Lessons From Military Justice

An Address Delivered Before the Maryland Bar Association on June 28, 1919, by John Henry Wigmore, Formerly Colonel Judge Advocate, U. S. A.

I. The prime object of military organization is Victory, not Justice. The Army's object is to kill, disable, or capture our enemy before he can kill or capture us. In that death-struggle which is ever impending, the Army, which defends the Nation, is strained by the terrific consciousness that the Nation's life and its own is every moment at stake. No other objective than Victory can have first place in its thoughts; there is never any remission of that strain. If the Army *can* do Justice to its men, well and good. But Justice is always secondary; and Victory is always primary.

This cardinal truth will explain why it is not always feasible to do exact Justice in the Army, in the midst of war.

II. But I am not here to defend military justice. It is civilian justice that is upon the defensive. It has been on the defensive for a generation past. It has done very little in that generation to take up that defensive. It is doing very little now.

This Bar Association, and every Bar Association, has a prime duty to improve civilian justice.

Civilian justice will have to remain on the defensive until it can show that it is at least as efficient in its machinery as military justice. When civilian justice shall have adopted all the efficient measures now already possessed by military justice, and capable of equal use by civilian justice, then and not till then can it start a counter-offensive.

III. The military system can say this for itself: It *knows what it wants;* and it systematically *goes in and gets it.*

Civilian criminal justice does not even know what it wants; much less does it resolutely go in and get anything.

Military justice wants *discipline*—that is, action in obedience to regulations and orders; this being absolutely necessary for prompt, competent, and decisive handling of masses of men. The court-martial system supplies the sanction of this discipline. It takes on the features of Justice because it must naturally perform the process of inquiring, in a particular case, what was the regulation or order, and whether it was in fact obeyed. But its object is discipline.

The civilian penal system, on the other hand, has not even formulated what it wants. Some still say Retribution to the individual; some say Prevention of other wrongdoers; some say not Retribution, but Reformation of the individual; and most ignore a fundamental element, viz., the public re-affirmation of the community's principles of right and wrong.

Nor does the civilian system resolutely go about any one of these purposes. It maintains a substantive law which is a hodgepodge of inadequate and illogical definitions. It maintains a procedure which has not been revised for a century. It maintains a prosecuting personnel which is in large proportion crude and untrained and narrow-minded, and a defense personnel which is usually skilled only in evading the law. It maintains a judiciary personnel which seldom studies its large problems and which seldom understands more than the elementary features of its duty. It maintains a police which, in the rural regions, is often the match of Dogberry the ancient watchman, and in the city regions is frequently undetermined by politics and petty intrigue. And it organizes all this personnel in a shiftless manner which would break down the efficiency of the ordinary business house in thirty days.

IV. Military justice is a theme of

many aspects. My remarks today will be limited to pointing out five features in which civilian criminal justice may take a lesson from military justice—features in which military justice has already arrived at methods to which civilian justice has scarcely begun to aspire.

1. *Centralized supervision of all criminal courts within the State.* The fundamental shortcoming of civilian criminal justice is that the several courts are virtually independent of each other. The Supreme Court, to be sure, is supposed to interpret the uniform static rule of law as established by the Legislature. But it stops there. We have forgotten that the efficiency of any penal system is largely dependent on the *current administration* of that law. And there is no provision in our system for administration. For example, in New York City there are some forty magistrates, each of whom is virtually the final arbiter in most cases coming before him. They rotate in turn among the different districts. But there is no central control giving a common policy, and they remain even ignorant each of what the other does or what policies he is following. A recent statistical inquiry shows the inefficiency of this (Journal of Criminal Law and Criminology, X, 90, May, 1919). A single illustration will suffice, viz.: the sentence. Of the 17,000 cases of *intoxication,* it appeared that the percentage *discharged,* by the several magistrates, ranged between 2 per cent and 79 per cent. Of those *convicted,* the disposition of the man by suspended sentence ranged between 1 per cent and 83 per cent; the disposition of fine ranged between 6 per cent and 80 per cent. On the charges of *disorderly conduct,* the discharges ranged between 18 per cent and 54 per cent. On the charges of *vagrancy,* the discharges ranged between 5 per cent and 79 per cent. On convictions of disorderly conduct, the suspension of sentence ranged between 2 per cent and 50 per cent. On conviction of *peddling without a license,* the fines ranged between 20 per cent and 100 per cent. All of this represented a single community and the same set of judges sitting in the same courts. Such a helter-skelter treatment of a problem demanding consistent and known policies spells complete inefficiency, and is unworthy of an enlightened community seeking to repress crime.

The same features would be found throughout all the administrative stages of penal justice—arrest, bail, defense, and the rest. We possess a vast aggregation of administrative officials, with no inspection, no supervision, no central control—not even knowledge of what the others are doing.

What we need here is to adopt the Federal military system. Every division and department is to be sure an independent command, in military justice, as in other matters. But a record of every general court-martial is kept, and under U. S. Rev. St., Sec. 1199, it is forwarded to the Judge Advocate General at Washington for revision. There the records are scrutinized, not only for errors of law, but for deviations from sound policy. The J. A. G. notifies the entire body of division commanders of policies desirable to follow, and notifies individual commanders of specific errors or deviations. For example, the regular army tradition called for a sentence of penitentiary and discharge for any offense in the nature of larceny. But the J. A. G. recommended, when our new army was forming, that caution be here exercised, and that for men capable of reclamation a lighter sentence be imposed, and a confinement only in the probationary barracks, pending restoration to duty, if possible. Thousands were saved to the Army in this way. The best policy was made known by the central superintendent to all commanders, and a common administrative attitude became possible.

So, also, procedural errors of frequent occurrence were noted, and circular letters were sent out calling attention to their frequency and warning against their recurrence. In this manner, the average court-martial was improved, and greater efficiency attained.

Such a central supervision is the one feature most needed for state criminal jus-

tice. Its lack is one of the most obvious glaring defects.

What we need is a *chief judicial superintendent* in every state. We need such an official for civil justice also. But we need him most in criminal justice. And the example is already here awaiting us, in Federal military justice. We have no excuse for failing to avail ourselves of that example.

2. *Verbatim record of trial.* The foregoing measure is futile unless a verbatim stenographic report is preserved of each trial. This practice exists, in military justice, for all general courts-martial, and has made possible the method of central supervision. In common fairness, also, such a report should be made at the expense of the state. The practice is not yet universal, in civilian justice; usually, only enough is transcribed to explain the legal exceptions. For administrative supervising purposes a complete record should be preserved and forwarded.

3. *Automatic appellate scrutiny for every accused's case.* In spite of the several specific safeguards on which we place such high value—right to witnesses, right to counsel, right to jury, right to remain silent, and so on—the one vital measure which insures the constant observance of all these is still lacking in our law, viz., the automatic appellate scrutiny of *every* criminal case by a higher court.

We are accustomed to think of these things from the point of view only of an accused's rights; from that point of view he is entitled to the protection of appellate scrutiny. But it is even more important from the administrative point of view. An effective central supervision of criminal justice is impossible without complete data showing the central authority what is being done daily in our trial courts. *Every* record should go up for appellate scrutiny.

In Federal military justice every record of every case goes up to at least one higher authority; and all records of general courts-martial go up two stages, to the Judge Advocate General, or the President. Every convicted man thus obtains an appellate scrutiny; and this he obtains without any cost, paying no counsel fee and no transcription expense.

This is an ideal of which civilian justice has been dreaming ever since Magna Carta. Complete justice to the poor man is still a dream in our civilian courts. In the military courts, it is already a fact. And it costs not a cent. It does not even need a motion in court. It is automatic.

Here is an object lesson for civilian justice.

4. *Minimum indeterminate sentence.* The whimsicalities and inequities of sentences have long been a glaring defect of our civilian justice. One reason for this fault is that there is always a conflict between the principle of publicly rebuking the crime itself with an adequate penalty, and that of allowing for the offender's extenuating circumstances. A severe sentence may be needful to deter others, but may be needless for the individual offender. There is only one way to reconcile these principles, viz., impose a deterrent sentence of maximum period, and leave the minimum entirely unfixed, so as to permit individual treatment. E. g., impose for a burglary a sentence of not more than ten years, and then after the man has been studied in prison, extend clemency and release him, if proper, at any early period deemed suitable. This also enables the case to be adequately considered after a fuller examination of the man's personality and history than is possible at the time of trial.

The minimum indeterminate sentence already exists in the Federal military justice. A section of the J. A. G. O., known as the Clemency section, passes upon all applications for clemency, examining both the record of the trial and the report of the prison superintendent. The law authorizes the Secretary of War to direct the release of any prisoner at any time. Thus the administration of the sentence after conviction is flexible, and is centralized in the same hands as the trial itself.

Only two states yet possess the genuine minimum indeterminate sentence, i. e., a

law which permits the release of the convicted person at any time that is deemed fit, prior to the maximum period. Moreover, the parole and sentence laws that do permit reduction of time are administered by all sorts of disjointed boards, which constitute rival authorities and have no direct connection with the courts, the original organs of criminal justice. The only way to secure efficient administration of the minimum indeterminate sentence is to bring it under control of the central supervising officer.

Federal military justice does this. The machinery is next to perfect. How deplorably imperfect are the state systems can be seen by perusing in the Journal of Criminal Law and Criminology, the reports from 1913 to 1916 of the Committee on Indeterminate Sentence and Parole.

5. *Psychiatric examination of the accused.* Modern science is unanimous that mental defects are responsible for a large share of crime. E. g., of 100 paroled prisoners who violated their parole, a prison record showed that 35 had been classed as mental defectives. Modern science agrees that every court should have attached to it a medical officer who will report upon the accused's mental condition, and that the sentence and treatment of the accused should be determined in the light of this report. There are perhaps 2,000 criminal courts sitting daily in the U. S.; no more than 20 of these have a regular psychiatric examiner attached to them. In the City of Baltimore you have recently given the medical man a status in one of your courts.

In the Federal military justice, the probationary barracks at Fort Leavenworth have for eight years past had the best kind of psychiatric advice. At our entrance to the war, the Secretary of War sanctioned a plan to assign psychiatric officers to every division for examination of accused men before trial. Owing to the lack of sufficient qualified officers, and to other obstacles, this was not immediately done. But after some time it was achieved in many, if not most, cantonments; and now the records on appeal usually contain a report by the psychiatric officer as a matter of course.

Here the Federal military system has rapidly accepted a measure which still remains unadopted by any State in the Union.

This measure brings us back to the necessity of a centrally directed administration. The psychiatric staff must be organized from State headquarters, because in the rural courts there are not enough criminal cases to require the entire continuous service of one officer, and the staff must therefore go on circuit when and where needed. It remains for the State civilian justice to take this step.

6. *Conclusion.* And so, throughout, we come back to the prime fact, viz., that the most needed measure for State criminal justice today is centralized supervision under a chief judicial superintendent; that this measure not only itself brings vast improvement in efficiency, but that it alone will enable other measure to work well; that the Federal military justice already possesses this and several other features well worth imitation; and that civilian justice is put on the defensive to take a lesson in becoming efficient by adopting these features.

Wanted: A Short Constitution

A state constitution should be short, clear and confined to governmental *framework,* leaving all the filling to be done by the government in action. This policy has been so far departed from that all our state constitutions are long, some very long, and they consist very largely of statutory matter. The question has been asked, "Who can write a constitution of a dozen lines?" That man has not yet been found. But the man can be found who can write a state constitution of not exceeding a dozen paragraphs or articles. What state constitutional convention will be first to do this?—*Equity* for July, 1917, p. 127.

Is Stupid Waste of Time Essential?

Philadelphia Editor Visits Court and Then Sets Down Impressions Made on Mind of Business Man by Judicial Fumbling

Criticism of judicial procedure depends, like every other matter of opinion, on the point of view. To the business man many things seem stupidly wasteful and irritating which to the lawyer are so commonplace as to appear a necessary part of judicial administration. It is a good thing for lawyers occasionally to get the opinion of an intelligent layman. Such a person is Richard Spillane, editor of the "business and financial section" of the Philadelphia Public Ledger. Under date of Sept. 15, 1920, Editor Spillane published the following comment on one day's experience in the courtroom:

"There is a shortage of labor of all kinds today—office workers, factory workers, shop workers, farm workers—but you wouldn't think so if you went to court. The courts are crowded. The benches are packed. The corridors of the court buildings overflow.

"Some persons think time is valuable. You'd never think so if you went to court.

"As a matter of good citizenship a man went to court yesterday not many miles from Philadelphia. He was there all day, and all he did was fret and fume over the utterly unwarranted delays. He left court believing nothing needs reform in America more than our judicial system, and that one of the great wastes of the world is in the courts.

"He went into several court rooms in the long hours he was waiting for the case to be called in which he was to testify, and in each and all of them the same dawdling was apparent, the same indifference to the rights of the public and the same loafing by idlers and the same punishment of persons who were there on business.

"Cases that earnest, competent lawyers or sensible judges could dispose of in thirty minutes dragged on for hours and hours. Windbags and pettifoggers ranted or dawdled with utter ignorance or indifference to the wrong they were doing. And the judges permitted if they did not abet it.

"For example: A criminal case was called early in the day. The amount involved was $2. There were two persons accused—husband and wife. They were bad characters. A jury was impanelled and the case started early in the morning session. It dragged along until the midday recess. It was resumed after luncheon. Well along in the afternoon the lawyers began their addresses to the jury.

"The counsel for the defense pawed the air and shouted as he stressed matters that were inconsequential. He talked until he was tired and had made the jury and every sane person present tired. Then the district attorney started. He did not shout. He was quite moderate in everything except what he did to the English language. For the wrongs he did to it nothing short of a sentence of from three to five years in a grammar school would be fitting.

"After His Honor had permitted counsel for the defense and the district attorney to talk themselves out he got into the game himself.

"The case was as simple as A, B, C, but the charge the judge made to the jury was as complex as a Sam Lloyd chess problem. He explained the law in its bearing on this phase of the case and then on that. Next, he turned to a definition of reasonable doubt that left everybody doubting everybody and everything. Then he wandered on into new fields. He talked and he talked and he talked. From a perfectly clear understanding of the case the people in the room accumulated fog in their brains. Half a dozen times that judge declared he was leaving the

case in the hands of the jury, but he didn't—at least he didn't when he made the promises. Instead he started off on a new tack. The people looked at each other and made signs indicative of earache or desire to sleep. One man caused a smile by asking in a whisper if any one recalled the poem of Tennyson about the brook that goes on forever. The judge took the better part of an hour delivering a charge that a clear-headed judge could have expressed in five minutes or less. Instead of clarifying the case he muddled it.

"A court should be a place of dignity and of justice. There are many American courts that are neither.

"It is bad system that subpoenas workers, business men, active people to court, commands their presence and then lets them sit idle for hours or for days, doing nothing but wearing themselves into anger and disgust at courts by reason of their ill treatment.

"A judge who does not handle his court with regard to public rights should be removed.

"He wastes the time of workers and abuses good citizenship. There would be more respect for the courts if the judges attended to their business.

"There would be more respect for lawyers if lawyers didn't promote procrastination."

The Law's Ideal

One who holds inflexibly to an ideal of government of laws and not of men must presume a co-ordinated system of courts to serve as the material medium for an expression of the law's ideal. One who thinks of the law as the popular will must presume a system at once responsive and responsible. At the present time our machinery of justice is not closely co-ordinated, nor is there conspicuous responsibility, nor any possible responsiveness to any definite ideal of justice or administration. This is especially true of the decentralized and disconnected local courts. No interest has anything to fear from improvement in the machinery of justice. On the contrary all interests can find in such a proposal a genuine advance toward the goal of good government.

—Bul. VI, A. J. S., p. 68.

A Self-Governing Bar

The bar in the aggregate is unique in respect to its close relation to the administration of justice and its exclusive possession of knowledge in respect thereto. Yet the bar is without any practical organization through which to exercise its power, and as a result many matters which pertain chiefly to its province have passed to other hands. Admission to the bar is left to a few official examiners appointed under a law passed by laymen. Exclusion from the bar is delegated to a few overworked judges. The selection of judges, a subject on which few outside the bar have any competency whatever, is in the hands of laymen guided by politicians. The establishment of the rules of procedure under which judicial business is transacted is vested in legislatures which give it some cursory attention after matters of political importance have been attended to. All this has come to pass because of the want of an organization to mobilize the profession. "The lawyer has been scolded and exhorted so long that he would feel neglected if his critics should cease. But nobody has ever suggested the practical steps to be taken to enable him to work out his salvation. The time has come to stop moralizing and consider a definite plan for integrating the bar so it can realize its highest ideals." JOURNAL OF AMERICAN SOCIETY OF JUDICATURE, Dec., 1918. The membership of the existing bar associations is a small minority of the bar, and their powers are confined largely to electing officers, holding dinners, and passing resolutions. That they have been able to accomplish anything toward reform in procedure is due to the heroic efforts of a comparatively few men.

Suppose, however, there should be created bar associations in which every lawyer was ipso facto a member, having the control of admission to and expulsion from the bar, and of nominating all candidates for judicial office. To such an organization could likewise be committed the power to enact, by proper formulating committees and a referendum, all rules of judicial procedure. These are extensive powers, it is true, and liable to abuse, but they must be exercised by some one, and it is submitted that not one of them is today in hands so competent or so trustworthy as those of the bar. It may be noted that in Minnesota the district court judges have recently appointed a permanent committee to act on proposed changes in court rules and procedure, and to consider legislation. This is a step in the right direction, albeit a short one. To be really effective the committee should be representative of a fully organized bar, and that bar should have much power with respect to the regulation of procedure which is now committed to the legislature.

—Law Notes, Vol. XXIII, No. 7.

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